IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4018 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.H.WAGHELA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

1 to 5 NO

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VIKRAM P JOSHI - Petitioner(s)

Versus

ORIENTAL INSURANCE COMPANY LTD & 1 - Respondent(s)

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Appearance :

MS SNEHA JANI for MR AY KOGJE for Petitioner No(s).: 1.
NOTICE SERVED for Respondent No(s).: 1,2.
MR KK NAIR for Respondent No(s).: 1.

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CORAM :HON'BLE MR.JUSTICE D.H.WAGHELA

Date : 07/07/2005

ORAL JUDGMENT

1. By this petition under Article 226 of the Constitution, the petitioner has prayed for quashing the communication dated 5.1.1004 of the respondent, whereby the benefits of pension were denied to the petitioner on the ground that he had not completed 20 years

of service, which was the minimum requirement for being eligible for pension after taking voluntary retirement from service.

2. The basic undisputed and relevant facts, in short, are that the petitioner, a Development Officer under the respondent, opted for voluntary retirement from service by making an application which was accepted on 1.4.2003. The Government of India, in its Department of Economic Affairs, Insurance Division, vide its Notification dated 2.1.2003, amended the General Insurance (Rationalisation of Pay Scales and other Conditions of Service of Development Staff) Scheme, 1976 by the scheme called "General Insurance (Rationalisation of Pay Scales and Other Conditions of Service of Development Staff) Amendment Scheme, 2003". Under the amended Scheme, a special voluntary retirement package was offered under Paragraph 15-C and, in Annexure-I to the Scheme, provisions for eligibility, payment of ex-gratia amount and other benefits were made. According to those provisions, a Development Officer seeking special voluntary retirement package would be eligible for special benefits in addition to ex-gratia amount and that included pension (including commuted value of pension) as per the General Insurance (Employees) Pension Scheme, 1995, **if eligible.** In view of the objection of the respondent regarding eligibility of the petitioner, it has to be decided whether the petitioner was eligible for pension under the Pension Scheme of 1995.

3. According to the provisions of Paragraph 30 of the General Insurance (Employees) Pension Scheme, 1995, at any time after an employee has completed twenty years of qualifying service, he may, by giving notice of not less than ninety days, in writing to the appointing authority, retire from servi ce. An employee who has elected to retire under that paragraph and has given necessary notice to that effect to the appointing authority shall be precluded from withdrawing his notice except with the specific approval of such authority. According to sub-para (5), the qualifying service of

an employee retiring voluntarily under that paragraph shall be increased by a period not exceeding five years, subject to the condition that the total qualifying service rendered by such employee shall not in any case exceed thirty three years and it does not take him beyond the date of retirement. These provisions for payment of pension on voluntary retirement, therefore, require completion of twenty years of service. Admittedly, the petitioner had not completed twenty years of qualifying service and, therefore, he is not entitled to pension on voluntary retirement, according to the submission of the respondent.

4. Learned counsel Ms.Sneha Jani, appearing for the petitioner, vehemently argued that "*retirement"* for the purpose of the Pension Scheme included "voluntary retirement" in accordance with the provisions contained in Paragraph 30 of the Scheme as defined in Paragraph 2 (t) of the Scheme and the petitioner had indeed completed ten years of service which is the minimum qualifying service under Paragraph 14 of the Scheme. The learned counsel relied upon the judgment of the Punjab & Haryana High Court in *GANGA BISHAN v. STATE OF HARYANA AND OTHERS [1994 (4) SLR 59]* in which it is held that a person becomes entitled to grant of pension on completion of ten years qualifying service. A judgment of the same High Court in *HARYANA STATE through COLLECTOR v. MADAN PAL AHLAWAT [2003 (4) SLR 583]* was also relied upon for the proposition based upon similar provisions that in the case of a government employee who at the time of retirement has rendered qualifying service of ten years or more, but less than 33 years, the amount of pension shall be such proportion of the maximum admissible pension, subject to a minimum of Rs.375. In view of the fact that the judgments relied upon for the petitioner are not in the context of voluntary retirement, both these judgments are not applicable in the facts of the present case.

5. Learned counsel Mr.Nair relied upon recent judgment of the Supreme Court in *VICE-CHAIRMAN AND MANAGING DIRECTOR, APSIDC LTD. v. R.*

VARAPRASAD AND OTHERS [AIR 2003 SC 4050], wherein it is clearly held that when the employees have opted for voluntary retirement scheme on their own without any compulsion knowing fully well about the Scheme, guidelines and circulars governing the same, it is not open to them to make any claim contrary to the terms accepted. Here in the facts of the present case, not only the Scheme expressly requires the applicant to be eligible under the Pension Scheme for entitlement to pension, but the respondent have, by administrative instruction dated 6.2.2003, further clarified that those who have not completed twenty years of minimum service for eligibility of pension shall not be entitled to any pension.

6. In view of the aforesaid clear stipulations being part of the voluntary retirement scheme itself and the provisions of the Pension Scheme being also clear as far as the eligibility for pension is concerned and the petitioner having admittedly not completed twenty years of service, the impugned order denying the benefit of pension has to be upheld and cannot be quashed. Accordingly, the petition fails and is rejected. Notice is discharged with no order as to costs.

Sd/-

(D.H.WAGHELA, J.)

(KMG Thilake)